IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15753 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARVEL FASHIONS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 15753 of 2003
MR PR NANAVATI for Petitioner No. 1
MR DN PATEL for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 17/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

1. RULE. Service of rule is waived by Senior Central Government Standing Counsel Shri D.N. Patel for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner has been aggrieved by an order dated 15th October, 2003, whereby the petitioner's request for release of the seized goods, upon payment of lesser amount, has been rejected.

3. According to the petitioner, which is a partnership firm, its goods worth Rs.54,93,761/- were seized. According to the petitioner-firm, there was no justifiable reason for seizure of the said goods as no order was passed with regard to seizure thereof and, therefore, the petitioner had approached this Court by filing Special Civil Application No.7198/2003. During the pendency of the said petition, an order dated 4th June, 2003 had been passed, whereby the petitioner was informed that the goods in question would be released provisionally upon payment of a particular amount. In view of the said order, the petitioner withdrew the petition and, subsequently, made a request for paying lesser amount than the amount, which was demanded under communication dated 4th June, 2003. When the said request made by the petitioner was rejected by the impugned order dated 15th October, 2003, the petitioner has filed this petition with a prayer that the goods in question be released, especially when the petitioner has already paid a sum of Rs.20 lakhs at the time when the godown of the petitioner had been raided and the aforestated goods had been seized.

4. In pursuance of notice issued by this Court, Senior Central Government Standing Counsel Shri D.N. Patel has appeared and has filed affidavit-in reply of Shri Prabhat Singh, Deputy Commissioner, Central Excise and Customs. According to the case of the respondents, the amount of Rs. 20 lakhs was paid by the petitioner voluntarily because the petitioner had to make payment in respect of some earlier dues. Though the amount had not been adjudicated at the time when the raid had been carried out, the said amount has been paid in respect of other liabilities of the petitioner. Of course, the said fact has not been disputed by the petitioner because no order has been passed till today, whereby the petitioner has been saddled with the said liability.

5. Be that as it may, the fact remains that a sum of Rs. 20 lakhs has already been paid by the petitioner to the respondent authorities though no order has been passed for paying the said amount. The petitioner has submitted that at present he has stopped his manufacturing activity and, therefore, the petitioner is not in a position to make payment. It has been submitted that the petitioner is prepared to give an undertaking to this Court that whatever amount is ultimately determined by the concerned authority, the petitioner shall pay the same subject to the right of the petitioner to file an appeal.

6. Looking to the facts of the case, the impugned order dated 4th June, 2003 is modified to the effect that instead of giving cash security for the amount equal to 25% of the bond, i.e., Rs. 13,73,440/-, the petitioner firm shall give bank guarantee for Rs. 5 lakhs and for the remaining amount, i.e., Rs. 8,73,440/-, an undertaking shall be given by two partners of the petitioner firm to this Court within two weeks from today. The petitioner shall also execute requisite bond for the entire amount of goods i.e. for Rs. 54,93,761/. Upon executing the bond and upon filing the bank guarantee as well as the undertaking, the goods in question shall be released.

7. The petition is therefore allowed. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

(A.R. DAVE, J.)

(K.A. PUJ, J.)

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